

# **TOWN OF MARSHFIELD DEVELOPMENT REVIEW BOARD**

## **Appeal of Zoning Administrator Decision**

**Henry Harris, Appellant**

**Re: Town of Marshfield Parcel ID# EN 029**

**1356 Ennis Hill Road, Marshfield, Vermont 05658**

### **I. Procedural History**

On April 1, 2021, the Marshfield Zoning Administrator (ZA), Kate Hayes, issued a letter to Mr. Henry Harris regarding the Uprise Camp to be held at 1356 Ennis Hill Road, Marshfield, VT. The letter contained the subject line, "Uprise Camp for July 25 thru Aug 1 2021." The letter indicated that Mr. Harris is required to apply for a Conditional Use Permit (CUP) from the Marshfield Development Review Board (DRB) for the Uprise Camp from July 25, 2021 to August 1, 2021. Mr. Harris appealed the decision in the April 1, 2021 letter issued by Ms. Hayes that a CUP is required for the Uprise Camp from July 25, 2021 to August 1, 2021 to the DRB.

The DRB held a hearing on the appeal filed by Mr. Harris on May 13, 2021. At that hearing, Mr. Harris presented evidence and argument to support his appeal. Mr. Harris was represented at the hearing by Timothy Belcher, Esq.. Ms. Hayes presented her evidence and argument as to why a CUP is required from the DRB for the Uprise Camp from July 25, 2021 to August 1, 2021 at the hearing. No other people participated in the hearing.

Following the May 13, 2021 hearing, it came to the DRB's attention that that abutters to the property where the camp will be held, 1356 Ennis Hill Road, Marshfield, VT, were not notified regarding the appeal as required by 24 V.S.A. § 4464. The DRB notes that the May 13, 2021 hearing was noticed via publication of the notice in the Montpelier Times Argus and by posting notice of the hearing in the Town of Marshfield as required by state law.

On June 2, 2021, Mr. Timothy Howe, an abutter to the property in question, requested a hearing on the appeal filed by Mr. Harris. In response to this request, the DRB scheduled a second hearing on the appeal for July 1, 2021. The DRB requested that Mr. Harris provide notice of the July 1, 2021 hearing to abutting landowners as required by 24 V.S.A. § 4464. Notice of the hearing was also posted in the Montpelier Times Argus and by posting notice of the hearing in the Town of Marshfield.

The DRB held the second hearing on the appeal on July 1, 2021. At the hearing, Suzan Condon, Timothy Howe and Valerie Roberts participated in the hearing as abutting landowners. Mr. Harris and Ms. Hayes also participated in the hearing. Mr. Harris was represented at the July 1, 2021 hearing by Timothy Belcher, Esq..

The DRB recessed the matter following the hearings on May 13<sup>th</sup> and July 1<sup>st</sup>. The DRB deliberated on this matter on May 19<sup>th</sup>, July 1<sup>st</sup> and July 8<sup>th</sup>. The DRB closed the proceeding on July 8<sup>th</sup>. This matter is now ready for decision.

## **II. Findings of Fact**

Below are the DRB's findings of fact based on the evidence in the record in this proceeding, which includes the Zoning Administrator's April 1, 2021 letter and accompanying documents, the appeal filed by Mr. Harris and accompanying documents, the relevant testimony and written information submitted by Ms. Condon and Mr. Howe related to this matter.

1. Mr. Harris (Appellant) is proposing to run a "youth action camp" on his property from July 25, 2021 to August 1, 2021 (See Appellant's website for the camp [uprisecampvt.org](http://uprisecampvt.org) provided by the ZA as part of the proceeding).
2. The camp is advertised as being for people ages 13-19 and as "a week of direct action schools, radical political education, fun and excitement." (See Appellant's website for the camp [uprisecampvt.org](http://uprisecampvt.org) provided by the ZA as part of the proceeding).
3. The cost of the camp is a sliding scale from free to \$500 suggested donation for the week. (See Appellant's website for the camp [uprisecampvt.org](http://uprisecampvt.org) provided by the ZA as part of the proceeding).
4. Appellant has received a grant of approximately \$17,000 to run the camp from the Global Justice Economic Project, a not for profit organization. The camp itself is being run as a not for profit organization (Testimony of Appellant).
5. There will be a staff of approximately 20 people at the camp. Staff will be paid a stipend of \$200-\$300. (Testimony of Appellant).
6. At least 30 campers are expected to attend the camp. (Testimony of Appellant).
7. Appellant operates a farm on the property. The farm structures will be used to host the camp and no new structures will be built for the camp. (Testimony of Appellant).
8. Mr. Howe and Ms. Condon testified about concerns related to traffic associated with the camp in previous years that the camp was operated.
9. Ms. Condon testified about safety, security and noise concerns related to the operation of the camp.
10. Appellant testified that the camp is a permitted use that does not require a CUP under the Town of Marshfield Zoning Bylaws (Bylaws) in the Agricultural and Rural Residential District because the camp is either a community center, public and outdoor recreation or a dormitory use, which are permitted uses in the Agricultural and Rural Residential District under the Bylaws.
11. Appellant also testified that camp is exempt from permitting under Section 304 of the Bylaws, which address Home Occupations and that the project is exempt from the Bylaws as an agricultural use.

12. The Appellant testified that he has the right to engage in political activity on his property and that the Town would be infringing on his first amendment rights if it interfered by regulating the activities in question through the Bylaws.
13. Appellant also testified that the activities in question were more akin to friends gathering to discuss ideas rather than a camp and should not be regulated under the Bylaws.
14. The ZA testified that the project requires a permit because the DRB issued a CUP for the camp to Mr. Harris on July 17, 2019 and that CUP required Mr. Harris to obtain a permit for the camp in subsequent years if the camp is operated.
15. Mr. Harris testified that he obtained the CUP in 2019 even though he did not believe a permit was required.
16. The ZA testified that a CUP is required for the camp because the camp is change of use under the Bylaws. The ZA testified that the current use of the property is agricultural and the camp qualifies as a commercial use and operating the camp is a change of use under the Bylaws..

### **III. Conclusions of Law**

Based on the findings of fact and the evidence in the record of the proceeding the DRB concludes that the proposed camp by the Appellant on July 25, 2021 to August 1, 2021 is a change of use that requires a CUP from the DRB under the Bylaws.

Commercial use is defined in the Bylaws as:

*The production or provision of a product or service in return for monetary and/or other consideration except the provision of such product or service by a home occupation as defined herein. Non-profit organizations engaged in the provisions of goods or services are considered to be a commercial use under this Ordinance.*

Section 180 of the Bylaws.

The DRB concludes that the Uprise Camp meets the definition of Commercial use in the Bylaws. Appellant is exchanging services for monetary consideration. The record is clear that either campers will pay for the services provided by the Appellant or grants have been provided to the Appellant to provide compensation for the services provided.

The Bylaws are clear that non-profit organizations that provide services in exchange for monetary and/or other consideration are included in the definition of commercial use. Accordingly, the fact that the Appellant's operation may be legally classified as a non-profit does not disqualify it as being a Commercial use under the Bylaws.

Because the DRB finds that the Uprise Camp qualifies as a Commercial use, we also find that the activity represents a Change of Use under the Bylaws. Change of use is defined in the Bylaws as:

*The alteration of use of land or a building from one category of use, as listed in the zoning district regulations or defined in this section, to another category of use. Change of use requires a zoning permit.*

#### Section 180 of the Bylaws

The DRB concludes that moving from an agricultural use to operating the Uprise Camp, which is a Commercial use under the Bylaws, constitutes a Change of use as defined in the Bylaws. Accordingly, the Appellant must obtain a zoning permit for the Uprise Camp as a change of use and a CUP from the DRB because operating the Uprise Camp is a Commercial use in the Agricultural and Rural Residential District.

The DRB concludes that the Uprise Camp does not qualify as a home occupation under the Bylaws. Home occupation is defined as:

*Home industry or occupation within a minor portion of the dwelling, accessory building, or a portion of the grounds, carried on by members of the family residing in the dwelling. Such use is clearly secondary to use of the premises for dwelling purposes, and meets the criteria set forth in Section 304 of these bylaws.*

#### Section 180 of the Bylaws.

Moreover Section 304 of the Bylaws provides that to qualify as a Home occupation a use “shall not produce levels of noise, vibration, smoke, dust, odors beyond those usually present in residential neighborhoods,” and “shall be carried on only by members of the family residing in the dwelling and not more than two non-residents.”

The evidence in the record is clear that with more than 20 employees, the activity will be conducted by individuals who are not members of the family residing at the property. In addition, abutting landowners have expressed concern about the impact of the activity in terms of noise, safety and traffic at levels that are not usually present in residential neighborhoods. Accordingly, the DRB concludes that the activity does not qualify as a Home occupation under the Bylaws.

The DRB concludes that the activities associated with the Uprise Camp do not qualify as a community center, public and outdoor recreation or a dormitory use, which are permitted uses in the Agricultural and Rural Residential District under the Bylaws.

Community center is not a defined term in the Bylaws. According to Websters Dictionary community center is defined as “a building or group of buildings for a community's educational and recreational activities.” The evidence record indicates that the use of the property is not for the community at large to use for educational and recreational activities. Rather, the use is for the provision of services to a group of people in exchange for money or

other consideration. Accordingly the DRB finds the use is a Commercial use that requires a CUP and not a Community center.

Dormitory use is not a defined term in the Bylaws. According to Websters Dictionary a dormitory is defined as “a room for sleeping *especially* : a large room containing numerous beds.” The DRB finds that the purpose of the use is not to create a large room for sleeping. While people may sleep at the Uprise Camp, the main purpose of the use is to provide activities noted by the evidence in the record of this proceeding.

Public and outdoor recreation is not defined in the Bylaws. However, Recreational facility is defined as:

*Includes public and private, indoor and outdoor facilities that provide or support recreational activities. Examples of recreational activities covered by this Ordinance include snowmobiling, the use of All Terrain Vehicles, golf driving range and course, skating rink, gymnasium, swimming pool, hobby workshop, trap, skeet and archery range, riding stable, park, tennis court, skiing facility, publicly owned and operated playground, play field, open space and other similar types of recreation.*

Section 180 of Bylaws.

The DRB finds that the use in question does not meet this definition of Recreational facility. This definition connotes a facility that is established to provide specific recreational uses as outlined in the definition, including archery, ski areas, cold ranges etc.. The evidence in the record indicates that the use in question is not the provision of specific recreational activities as outlined in the definition, but rather a camp where incidental recreation may occur, but where the use is not primarily a recreational facility as defined in the Bylaws.

With regard to the arguments made by the Appellant that there is first amendment right for people to gather on private property to discuss political and policy issues and activism, the DRB agrees. However, this appeal and decision has nothing to do with why people are gathered and what is being discussed. Rather, the sole issue before the DRB is does the activity in question constitute a Commercial use or a Change of use under the Bylaws such that a CUP and/or zoning permit is required.

The DRB focused on the relevant testimony and evidence regarding the exchange of services for monetary and other consideration, and whether this exchange of services for consideration constituted a Commercial use and Change of use for the operation of the Uprise Camp from July 25<sup>th</sup> to August 1<sup>st</sup> this year. The Appellant’s testimony and own website made it clear to the DRB that the Uprise Camp is a commercial operation where services are being provided, money is being paid for the services either directly from campers or indirectly through grants. More than 20 staff people will be hired to serve more than 30 campers.

Moreover, the DRB took note of the concerns related to traffic, noise and safety raised by the abutting landowners to the project. These are the very concerns that the CUP is designed to

address. The Town of Marshfield Zoning Bylaws exist to assure development occurs in an orderly fashion and that land use conflicts are appropriately addressed according to the terms set forth in the Bylaws. Requiring a CUP for a Commercial use in this residential area will allow the DRB to address any such impacts of the project through the CUP permit process.

#### **IV. Decision and Order**

The DRB denies the appeal in this matter. The DRB finds that the proposal to hold the Uprise Camp from July 25, 2021 to August 1, 2021 is a Commercial use and Change of use under the Bylaws. As such, the Appellant must obtain a CUP from the DRB and a zoning permit from the ZA prior to operating the Uprise Camp.

**Voting to Approve Conditional Use Permit:** Jon Groveman, Gary Leach, Jenny Warshow and Les Snow

**Voting to Disapprove:** None. **Absent:** None.

**Approved and ordered at Marshfield, Vermont, this 9<sup>th</sup> day of July 2021.**

By: Jon Groveman



Chair of the Marshfield  
Development Review Board

**NOTICE OF RIGHT TO APPEAL:** In accordance with 24 V.S.A. §§ 4471 and 4472, this decision may be appealed to the Vermont Environmental Court within 30 days of the date of this decision. Notice of appeal shall be filed by certified mailing, with fees, to the Vermont Environmental Court and by mailing a copy of the appeal to the Marshfield Town Clerk. Failure of any interested person to appeal this decision to the Vermont Environmental Court within the specified 30-day period shall result in such interested person being bound by this decision or act of the DRB. Thereafter, such an interested person shall not contest, either directly or indirectly, the decision or act of the DRB in any subsequent proceeding, including any enforcement action brought under the provisions of Title 24, Chapter 117 of the Vermont Statutes Annotated. See also Town of Marshfield Zoning Regulations at §235 (Appeals to Environmental Court).